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FILED IN DISTRICT COURT  
CLERK OF DISTRICT COURT

DISTRICT COURT, WATER DIVISION 1 COLORADO 901 9th Avenue, Room 418 P. O. Box 2038 Greeley, CO 80632	2004 JUN 30 PM 2:46
CONCERNING THE APPLICATION FOR WATER RIGHTS OF BAILEY WATER AND SANITATION DISTRICT, NORTH FORK ASSOCIATES, LLC AND MOUNTAIN MUTUAL RESERVOIR COMPANY   IN JEFFERSON AND PARK COUNTIES	 602497 07/28/2004 01:29P 1 of 13 R 66.00 D 0.00 DEBRA A GREEN PARK CO  <p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number 2003CW388  Div.:                      Ctm.:
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT          AND DECREE OF THE WATER COURT APPROVING A          PLAN FOR AUGMENTATION AND EXCHANGE RIGHT</b>	

THIS MATTER, having come on for consideration upon the Application of Bailey Water and Sanitation District, North Fork Associates, LLC and the Mountain Mutual Reservoir Company, for Approval of a Plan for Augmentation and Exchange Right, and the Referee having considered the pleadings, the files herein, the stipulations of the parties, the evidence presented and the comments of the Division Engineer, does find.

**FINDINGS OF FACT**

1. The Application was filed with the Water Clerk, Water Division 1, on November 26, 2003. All notices required by law of the filing of this Application have been fulfilled, and the Referee has jurisdiction over the subject matter of this proceeding and over all parties affected hereby, whether they have appeared or not. The land and water rights involved herein are not included within the boundaries of any designated ground water basin.

2. No statements of opposition to the Application were filed and the time for filing such statements has now expired.

3. The Bailey Water and Sanitation District ("District"), is the primary applicant in this matter. The District's mailing address is as follows:

Bailey Water and Sanitation District  
 P. O. Box 422  
 Bailey, Colorado 80421



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4. The District is a special district and a quasi-municipal corporation of the State of Colorado that provides water and wastewater services to homes and businesses located within an approximately 150 acre service area in the N 1/2 SW 1/4 of Section 29 and the S 1/2 N 1/2 and the N 1/2 S 1/2 of Section 30, all in Township 7 South, Range 72 West, 6th P.M., Park County, Colorado. A map that illustrates the general boundaries of the service area is attached as Exhibit "A."

5. The water supply for the District is obtained from the Bailey Water and Sanitation District Well No. 3585-RF. The structure is located in the NW 1/4 SE 1/4 of Section 30, Township 7 South, Range 72 West, 6th P.M., Park County, Colorado, at a point approximately 490 feet South of the East-West centerline of said Section 30, and 145 feet East of the North-South centerline of said Section 30. The source of water is ground water that is tributary to the North Fork of the South Platte River. The Bailey Water and Sanitation District Well No. 3585-RF was originally decreed in Case No. W-1577 for municipal use, in the amount of 0.088 of a cubic foot per second, with a date of appropriation of January 1, 1969. In Case No. 84CW012 (W-1739), the Well was decreed as an alternate point of diversion for the water right decreed to the Entrikin Ditch No. 225, in the amount of 1.0 cubic foot per second and date of appropriation of May 1, 1863.

6. Wastewater from all in-building uses of water is treated at a central wastewater plant that utilizes a mechanical treatment system. Return flows are to the North Fork of the South Platte River at a point in the SW 1/4 SE 1/4 of Section 29, Township 7 South, Range 72 West, 6th P.M., Park County, Colorado, located approximately 1,200 feet North of the South Section line and 2,600 feet West of the East Section line of said Section 29.

WATER USE AND DEPLETIONS

7. The Decree awarded to the Bailey Water and Sanitation District Well No. 3585-RF in Case No. 84CW012 normally provides sufficient water to supply the needs of the District's customers. This augmentation plan is being processed to ensure that the District will have a dependable water supply in times of extreme drought when a May 1, 1863, water right is called out of priority. During such times, water usage by the District's customers will be restricted to in-building uses only. Based on engineering studies of similar mechanical type central wastewater treatment systems, depletions will be five percent (5%) of the water diverted through the Bailey Water and Sanitation District Well No. 3585-RF.



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8. The maximum volume of water diverted pursuant to this augmentation plan will be limited to 4.98 acre feet per year. Depletions to the stream system, and any applicable transportation charges, will not exceed 0.25 of an acre foot per year.

WATER RIGHTS TO BE USED FOR AUGMENTATION AND REPLACEMENT PURPOSES

9. In order to provide the necessary replacement water to the stream system, the District has entered into a contract with North Fork Associates, LLC to purchase 8.0 shares of the capital stock of the Mountain Mutual Reservoir Company. The Mountain Mutual Reservoir Company (hereinafter referred to as "MMRC"), is a nonprofit Colorado corporation which has been created for the following principal purposes:

- a. To receive and hold title to direct flow and storage water rights, reservoirs and interests therein, lands, easements, rights-of-way, and other related facilities, in trust for its shareholders; and
- b. To administer water rights and operate facilities for its shareholders, in accordance with individual plans for augmentation approved by the Water Court.

The 8.0 shares of stock represent the right to receive 0.25 of an acre foot of augmentation water per year.

10. MMRC owns the following water rights for the benefit of its shareholders that will be used to supply the augmentation and replacement requirements of the District, (hereinafter referred to as the "Nickerson Ditch Rights"):

a. Nickerson Ditch No. 2. In accordance with the Decree entered in Civil Action No. 1678 of the Park County District Court, on May 22, 1913, the Nickerson Ditch No. 2 was awarded a direct flow priority of May 1, 1872, for 0.65 of a cubic foot per second for irrigation purposes. The source of water is Deer Creek, a tributary of the North Fork of the South Platte River. The headgate of the Nickerson Ditch No. 2 is located on the North bank of Deer Creek at a point whence the East quarter corner of Section 9, Township 7 South, Range 72 West, of the 6th P.M., bears North 59° 15' East, a distance of 2,320 feet, more or less.

b. Parmalee Ditch No. 1. In accordance with the Decree entered in Civil Action No. 1678 of the Park County District Court, on May 22, 1913, the Parmalee Ditch No. 1 was awarded



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a direct flow priority of May 1, 1867, for 0.52 of a cubic foot per second for irrigation purposes. The source of water is Deer Creek, a tributary of the North Fork of the South Platte River. Pursuant to a decree entered by the District Court for Water Division 1 in Case No. W-7434, on May 5, 1980, the point of diversion for the Parmalee Ditch No. 1 was transferred to the headgate of the Nickerson Ditch No. 2.

c. Carruthers Ditch No. 2. In accordance with the Decree entered in Civil Action No. 1678 of the Park County District Court, on May 22, 1913, the Carruthers Ditch No. 2 was awarded a direct flow priority of May 1, 1867, for 0.52 of a cubic foot per second for irrigation purposes. The source of water is Deer Creek, a tributary of the North Fork of the South Platte River. Pursuant to a decree entered by the District Court for Water Division 1 in Case No. W-7434, on May 5, 1980, the point of diversion for the 0.28 of a cubic foot per second decreed to the Carruthers Ditch No. 2 was transferred to the headgate of the Nickerson Ditch No. 2.

11. Pursuant to the Decree issued in Case No. 2000CW174, dated October 11, 2002, the historic consumptive use associated with the Nickerson Ditch Rights was quantified. The terms and conditions under which the Nickerson Ditch Rights are used for augmentation, replacement, exchange and storage purposes were also defined and approved in 2000CW174, as follows:

a. The Nickerson Ditch Rights may be left in the stream system to offset depletions from water use by MMRC shareholders. The water may also be stored in Maddox Reservoir, the Lower Sacramento Creek Reservoir No. 1 and other MMRC reservoirs within the South Platte River Basin located above South Platte, Colorado; provided, however, that the details of storage in another reservoir are published in the Water Resume, or such storage is approved by the State Engineer pursuant to C.R.S. §37-80-120 and §37-92-308.

b. The maximum rate of diversion under the Nickerson Ditch Rights is 0.8 of a cubic foot per second. Diversions are limited to the May 1, 1867, priorities decreed to the Parmalee Ditch No. 1 and the Carruthers Ditch No. 2.

c. Diversions to storage and/or assignment for in-stream augmentation credit are limited to the period April 23 through October 31 of each year, and are further limited to those times when water is physically and legally available for diversion at the historic Nickerson Ditch No. 2 headgate on Deer Creek. If the May 1, 1867, priority is not fully



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satisfied to the extent of 0.8 of a cubic foot per second, the diversion rate is reduced to the flow which is then physically and legally available.

d. Maximum monthly diversions under the Nickerson Ditch Rights are limited as follows: April, 2.0 acre feet; May, 16.0 acre feet; June, 19.0 acre feet; July, 16.0 acre feet; August, 10.0 acre feet; September, 7.0 acre feet; and October, 4.0 acre feet. Maximum annual diversions are limited to 62 acre feet per year. During any consecutive ten year period, total diversions are further limited to 486 acre feet.

12. The Nickerson Ditch Rights are either left in the stream system to offset stream depletions associated with water usage by MMRC shareholders, or the water is stored in Maddox Reservoir, located in the NE 1/4 SW 1/4 of Section 22, Township 7 South, Range 73 West, 6th P.M., Park County, or the Lower Sacramento Creek Reservoir No. 1, located in the NE 1/4 NW 1/4 of Section 32 and the SE 1/4 SW 1/4 of Section 29, Township 9 South, Range 77 West, 6th P.M., Park County, Colorado, for later release. The Decree in Case No. 2000CW174 adjudicated exchanges of the Nickerson Ditch Rights to storage in Maddox Reservoir and the Lower Sacramento Creek Reservoir No. 1, with an August 17, 2000, priority date.

13. The volume of Nickerson Ditch Rights committed to this augmentation plan, as well as the volume of such water committed to other decreed and currently pending plans for augmentation which utilize the Nickerson Ditch Rights as the augmentation and replacement source is summarized in the attached Exhibit "B." The commitment of storage space in Maddox Reservoir to this and other augmentation plans is summarized in the attached Exhibit "C."

TERMS AND CONDITIONS FOR THE DISTRICT'S PLAN FOR AUGMENTATION AND ADJUDICATION OF APPROPRIATIVE RIGHT OF SUBSTITUTION AND EXCHANGE

14. During times when the May 1, 1863, water right decreed to the Bailey Water and Sanitation District Well No. 3585-RF is not in priority, depletions associated with diversions from the Well will be augmented by releasing water from Maddox Reservoir or the Lower Sacramento Creek Reservoir No. 1. Transportation charges from the point where water is released to the stream system from MMRC facilities, to the point of depletion, shall be computed on the basis of 0.13 percent per mile. Maddox Reservoir delivers water to the North Fork of the South Platte River approximately five miles upstream from Well No. 3585-RF.



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15. Since the point of depletion associated with water use by the District is on the North Fork of the South Platte River above its confluence with the main stem, the District has requested adjudication of an appropriative right of substitute supply and exchange pursuant to C.R.S. §37-80-120 and §37-92-302(1)(a) for water released from the Lower Sacramento Creek Reservoir No. 1. The reach of the exchange shall extend from the confluence of the North Fork of the South Platte River and the South Platte River in the SW 1/4 SE 1/4 of Section 25, Township 7 South, Range 70 West, 6th P.M.; and thence up the North Fork of the South Platte River to the point of depletion from the subject well in the NW 1/4 SE 1/4 of Section 30, Township 7 South, Range 72 West, 6th P.M. The exchange will operate to replace depletions to the flow of water in the North Fork of the South Platte River as the depletions occur. The exchange will be administered with a priority date of November 26, 2003, at a maximum flow rate of 0.1 of a cubic foot per second.

16. Due to the small volume of annual stream depletions projected to occur from the District's water use under this plan for augmentation, instantaneous stream depletions shall be aggregated and replaced by one or more releases of short duration from storage. The rate and timing of an aggregated release shall be determined by the Division Engineer or his designated representative; provided, however, that an aggregated release shall be required no more frequently than once per month.

17. MMRC shall include depletions associated with the District's water usage during times when the May 1, 1863, water right decreed to the Bailey Water and Sanitation District Well No. 3585-RF is not in priority, in the reports which are presently being made to the State water officials for other plans for augmentation which utilize MMRC augmentation water supplies. On the basis of the submitted reports, not only for this plan but other plans administered by MMRC, and in accordance with the directives of the Division Engineer, MMRC shall make the required release of augmentation water by properly documenting the release of storage water from Maddox Reservoir or the Lower Sacramento Creek Reservoir No. 1. An example of the type of information to be included in the water accounting to be maintained by the Applicants is attached as Exhibit "D." It is not the Court's intention to mandate the use of the Exhibit "D" in its existing format. The Exhibit has been included simply to provide an illustration of the information that must be gathered and recorded. The Applicants, with the approval of the Division Engineer, may modify the form in the future as changes may become necessary for proper administration.



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18. The Referee finds that the source of replacement water and the protective terms outlined above are sufficient to protect the vested rights of other water users in the South Platte River Basin.

#### CONCLUSIONS OF LAW

19. This Application was filed with the Water Clerk, Water Division 1, pursuant to C.R.S. §37-92-302(a). No statements of opposition were filed, and as is specified in C.R.S. §37-92-302(1)(c), the time for filing statements of opposition has expired.

20. The Application for Approval of a Plan for Augmentation and Exchange Right described herein is contemplated and authorized by law, and if administered in accordance with this decree, will permit the uninterrupted utilization of the Bailey Water and Sanitation District Well No. 3585-RF, when the May 1, 1863, water right decreed to the Well is not in priority, without adversely affecting any other vested water rights in the South Platte River or its tributaries. C.R.S. §§37-92-305(3), (5) and (8), §37-80-120 and §37-83-104.

21. The State Engineer may lawfully be required to administer this plan for augmentation and water exchange, in the manner set forth herein.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

22. The Application for Approval of a Plan for Augmentation and Exchange Right proposed by the Bailey Water and Sanitation District, North Fork Associates, LLC and Mountain Mutual Reservoir Company is approved.

23. The State Engineer, the Division Engineer and/or the Water Commissioner for former Water District No. 80 shall not, at the request of appropriators, or on their own initiative, curtail the diversion and use of water from the Bailey Water and Sanitation District Well No. 3585-RF that are covered by this Plan for Augmentation, so long as the out-of-priority depletions associated with such diversions are replaced to the stream system pursuant to the conditions contained herein. To the extent that the District is ever unable to provide replacement water, as specified in this Plan, when the May 1, 1863, water right decreed to the Bailey Water and Sanitation District Well No. 3585-RF is not in priority, then the Well shall not be entitled to operate under the protection of this Plan, and shall be subject to administration and curtailment



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in accordance with the laws, rules and regulations of the State of Colorado. Pursuant to C.R.S. §37-92-305(8), the State Engineer shall curtail all out-of-priority diversions which are not so replaced as to prevent injury to vested water rights.

24. All of the foregoing Findings of Fact and Conclusions of Law are incorporated by reference herein, and are to be considered a part of the decretal portion hereof as though set out in full.

25. The District shall make available for release to the stream system, a sufficient quantity of water to replace depletions caused by diversions from the Bailey Water and Sanitation District Well No. 3585-RF, when the May 1, 1863, water right decreed to the Well is not in priority. The volume of augmentation water required to be released each year shall be limited to out-of-priority depletions to the stream system directly attributable to diversions from the Well.

26. The Court confirms that the Nickerson Ditch Rights and water stored by MMRC in Maddox Reservoir and the Lower Sacramento Creek Reservoir No. 1 can be utilized for replacement and augmentation purposes to replace depletions associated with out-of-priority water use by the District as described herein.

27. Pursuant to the provisions contained in C.R.S. §37-92-304(6), the plan for augmentation decreed herein shall be subject to the reconsideration of this Court, for the purpose of evaluating injury to vested water rights, for a period of three years from the date of this decree. Any person, within the three year period, may petition the Court to invoke its retained jurisdiction. Any such request shall state with particularity the factual basis for requesting that the Court evaluate injury to vested water rights associated with the operation of this decree, together with proposed decretal language to effect the petition. Unless otherwise stated herein, the party lodging the petition shall have the burden of going forward to establish the prima facie facts alleged in the petition. If the Court finds those facts to be established, Applicants shall thereupon have the burden of proof to show: (a) that any modification sought by Applicants will avoid injury to other appropriators, or (b) that any modification sought by a petitioner is not required to avoid injury to other appropriators, or (c) that any term or condition proposed by Applicants in response to a petition does avoid injury to other appropriators. Such petition shall be filed with the Court under the above styled caption and case number and shall be served by certified mail, return receipt requested, on all parties who have appeared herein, or on their counsel of record. If no such petition is lodged within the three year period, and the retained





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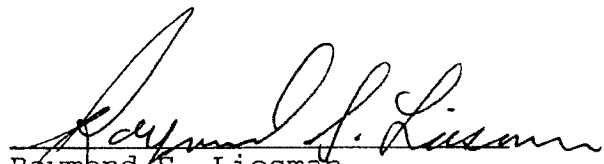
jurisdiction period is not extended by the Court in accordance with the provisions of the statute, this decree shall become final under its own terms.

28. The priority awarded herein to the exchange described in Paragraph No. 15, supra, was filed in the Water Court in 2003 and shall be administered as having been filed in that year, and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by historical dates of appropriation and not affected by the date of entry of ruling.

29. A copy of this Decree shall be recorded in the office of the Park County Clerk and Recorder by the District.

**JUN 30 2004**

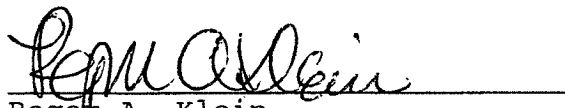
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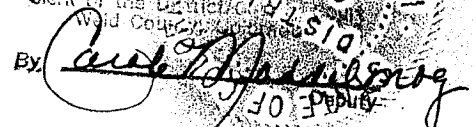
  
Raymond S. Liesman  
Water Referee  
Water Division No. 1

THE COURT DOTH FIND: NO PROTEST WAS FILED IN THIS MATTER.

THE FOREGOING RULING IS CONFIRMED AND APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

DATED: **JUL 22 2004**

  
Roger A. Klein  
Water Judge  
Water Division No. 1  
State of Colorado

Certified to be a full and true correct copy of the original in my custody  
Dated July 26, 2004  
Clerk of the District Court  
By: 

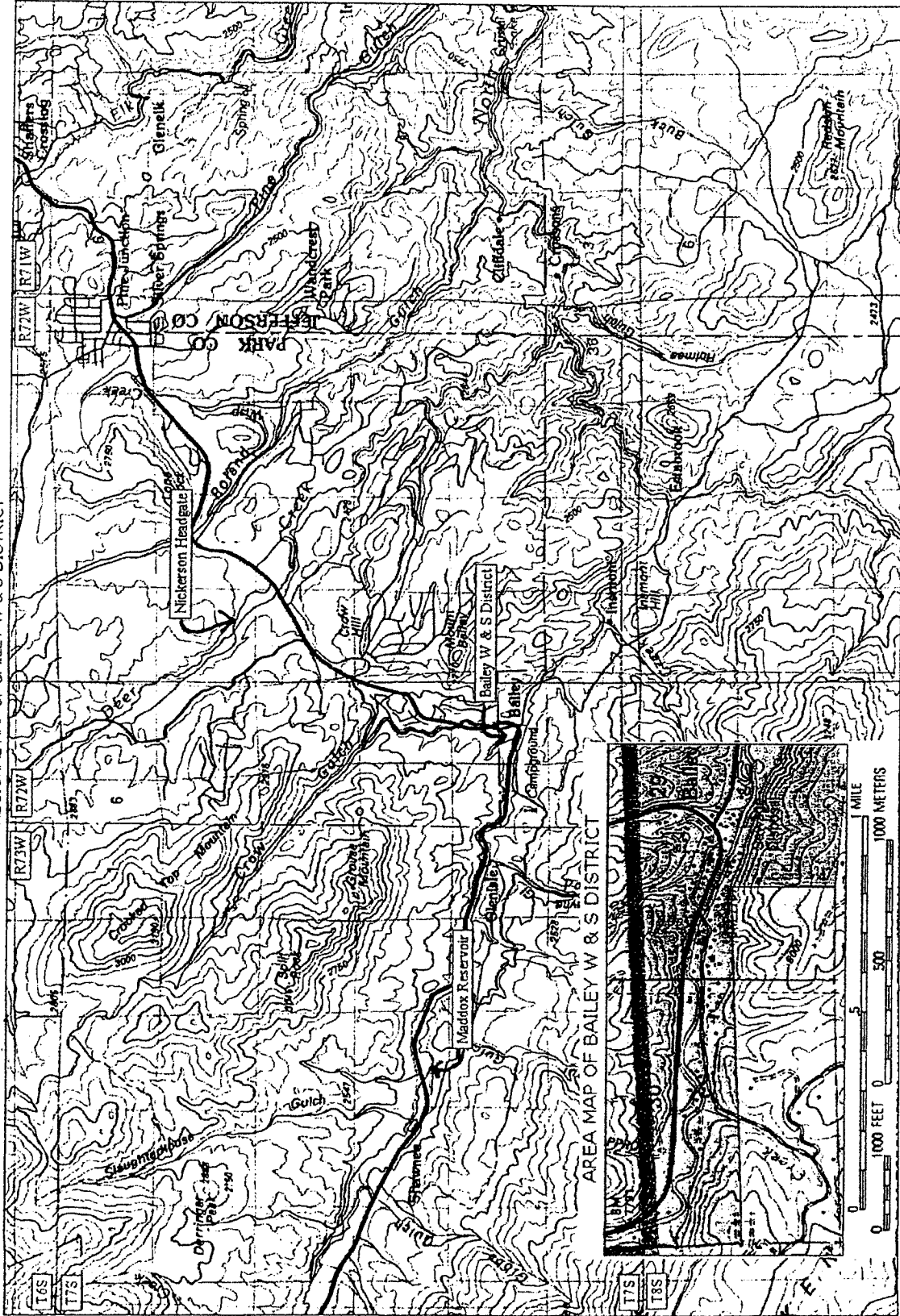


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EXHIBIT A  
ase No. 2003CW388

REGIONAL MAP OF BAILEY W & S DISTRICT



Map created with TOPO!® ©2002 National Geographic (www.nationalgeographic.com/topo)



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**EXHIBIT B**  
**TABULATION OF NICKERSON DITCH RIGHTS**  
**IN PLANS FOR AUGMENTATION (PFA)**

March 2004

Plans for Augmentation Based on  
MMRC's 0.52 cfs of Parmalee Ditch No.1 and 0.28 cfs of Carruthers Ditch No. 2 <sup>(a)</sup>

<u>Date of Application</u>	<u>Decree Date</u>	<u>Division 1 Case Number</u>	<u>Name of Applicant/Development</u>	<u>Amount In Acre-Feet Per Year</u>
10/26/2000	09/15/2003	2000CW192	YMCA of the Pikes Peak Region	5.024
10/26/2000	07/28/2003	2000CW194	Camp Colorado Church Of The Brethren	1.000
10/31/2002	In Process	2002CW242	Pikes Peak Council, Boy Scout	3.304
01/31/2003	10/16/2003	2003CW026	David P. Mendez & Sandy C. Mendez	0.134
01/31/2003	In Process	2003CW027	Bear Ranch LLLP	1.177
02/28/2003	10/31/2003	2003CW092	Pine Ranch Associates, L.L.C.	0.864
02/28/2003	10/31/2003	2003CW093	Vance Andrus & Colleen H. Andrus	0.248
03/31/2003	11/24/2003	2003CW147	Larry L. Gebauer & Wiltrud I. Gebauer	0.085
03/31/2003	11/24/2003	2003CW148	Lions Head Ranch, LLC	2.521
04/29/2003	In Process	2003CW203	Gary and Terri Bryning	1.010
08/29/2003	In Process	2003CW298	James G. and Peggy J. Mason	0.298
08/29/2003	In Process	2003CW300	Larry D. Mizner	0.267
08/29/2003	In Process	2003CW301	Golden Bell Camp and Conference Center	3.997
09/30/2003	In Process	2003CW325	Wilderness On Wheels	0.071
11/28/2003	In Process	2003CW388	Bailey Water and Sanitation District	0.250
12/30/2003	In Process	2003CW449	Camp Santa Maria	2.210
N/A			Jerry W. Keel & Sue E. Keel	5.000
TOTAL OF CURRENT OBLIGATIONS TO PLANS FOR AUGMENTATION				27.460
SURPLUS AVAILABLE FOR FUTURE PLANS FROM 48.600 ACRE-FEET				21.140

(a) The yield of 48.6 acre-feet of consumptive use water from 0.52 cfs of Parmalee Ditch No.1 and 0.28 cfs of Carruthers Ditch No. 2 was established in Water Division 1, Water Court Case No. 2000CW174.



**EXHIBIT C**  
**TABULATION OF USED MADDOX RESERVOIR SPACE**  
**IN PLANS FOR AUGMENTATION (PFA)**

March 2004

Plans for Augmentation Based on  
 53.85 Acre-Feet Usable Space In Maddox Reservoir <sup>(a)</sup>

<u>Date of Application</u>	<u>Decree Date</u>	<u>Division 1 Case Number</u>	<u>Name of Applicant/Development</u>	<u>Amount In Acre-Feet Per Year</u>
12/27/1979	09/25/1980	1979CW339	Platte Canyon School District No. 1	1.100 <sup>(b)</sup>
03/27/1980	01/16/1981	1980CW080	Arrowhead Subdivision James C. Fay	0.137 <sup>(b)</sup>
12/31/1980	03/11/1983	1980CW455	Brauch Enterprises	4.080 <sup>(b)</sup>
04/30/1981	04/20/1982	1981CW143	Pine Junction, Cecil & Penny Hoyt	0.160 <sup>(b)</sup>
09/23/1981	10/12/1982	1981CW298	Allen J. & Iris D. Gatewood	0.207 <sup>(b)</sup>
10/26/2000	09/15/2003	2000CW192	YMCA of the Pikes Peak Region	0.800
10/26/2000	07/28/2003	2000CW194	Camp Colorado Church Of The Brethren	0.535
01/31/2003	10/16/2003	2003CW026	David P. Mendez & Sandy C. Mendez	0.060
01/31/2003	In Process	2003CW027	Bear Ranch LLLP	0.528
02/28/2003	10/31/2003	2003CW092	Pine Ranch Associates, L.L.C.	0.190
02/28/2003	10/31/2003	2003CW093	Vance Andrus & Colleen H. Andrus	0.111
03/31/2003	11/26/2003	2003CW147	Larry L. Gebauer & Wiltrud I. Gebauer	0.036
03/31/2003	11/26/2003	2003CW148	Lions Head Ranch, LLC	1.087
04/29/2003	In Process	2003CW203	Gary and Terri Bryning	0.549
05/30/2003	In Process	2003CW239	Platte Canyon School District No. 1	1.089 <sup>(b)</sup>
08/29/2003	In Process	2003CW298	James G. and Peggy J. Mason	0.149
08/29/2003	In Process	2003CW300	Larry D. Mizner	0.110
09/30/2003	In Process	2003CW325	Wilderness On Wheels	0.027
11/28/2003	In Process	2003CW388	Bailey Water and Sanitation District	0.250
12/31/2003	In Process	2003CW449	Camp Santa Maria	0.110
N/A			Jerry W. Keel & Sue E. Keel	2.900
TOTAL OF CURRENT OBLIGATIONS TO PLANS FOR AUGMENTATION				14.215
EVAPORATION SPACE (Estimated)				
SURPLUS AVAILABLE FOR FUTURE PLANS FROM 53.85 ACRE-FEET				39.635

(a) The available space of 53.85 acre-feet is subject to change when the reservoir repair is complete.  
 (b) Water stored under the plan is not Mountain Mutual Reservoir Company water rights



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**EXHIBIT D  
REPORTING FORM  
BAILEY WATER AND SANITATION DISTRICT  
November 1, 20\_\_ to October 31, 20\_\_**

A	B	C	D	E
Month	Days of Diversion Under This Decree	Diversions (Gal)	Diversion (C)/325850 (AF)	Consumed Water (D) X 0.05 (AF)
November				
December				
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
Total	XXXXXXXXXXXX			

Send form to MMRC and District 80 Water Commissioner monthly when 2003CW388 is used and prior to November 15 each year.